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May 26

CONCORD, N.H.

Arnold J. H. Cheney
Chief of Law Enforcement
Fish and Game Department
Concord, New Hampshire

Dear Sir:

In a letter of May 21, 1952, you have made certain inquiries relative to the laws governing the issuance of licenses to deal in lobsters. It is my understanding that you are especially interested in section 53-a of chapter 245 of the Revised Laws as amended by Laws 1951, chapter 200, section 8.

Subsection I of the section cited requires that any person, firm or corporation who would engage in a retail trade in lobsters and crabs must first procure a license to do so. Upon issuance of such license, the licensee is entitled to engage in such trade, including the buying and selling of lobsters and crabs at retail and shipping and transporting the same. Each facility at which these commodities are sold must be licensed separately. Qualifications are made in respect to the general law relative to licensing: a person may buy at retail and transport lobsters and crabs for his personal use and consumption; and a person holding a lobster and crab license may, by virtue of that license, transport and sell lobsters and crabs lawfully taken by him.

This section, plain in its terms, leaves little to interpretation. It may be pointed out that the "lobster and crab license" referred to just above, is undoubtedly that provided by R.L. c. 245, s. 42 as amended by Laws 1951 c. 200, s. 1. So that a person holding such a license need not procure the license generally required under R.L. c. 245, s. 53-a.

Fees are provided for under subsection II and subsection IV of s. 53-a. A differentiation is made between the fee to be paid by residents and by non-residents. Whether a person or a partnership is to be deemed resident or non-resident may be determined by reference to R.L. c. 241, s. 1. In the case of corporations, residence or non-residence

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May be established by determining whether the corporation is organized under the laws of The State of New Hampshire, or of some other state. The information can generally be secured from the office of the Secretary of State. New Hampshire corporations, it would seem, should properly be considered residents; corporations organized under the laws of other states may logically be deemed to be non-residents.

In this respect, it is to be noted that there is no provision for reciprocity in the recognition of licenses among the states. The New Hampshire license is required to be business in New Hampshire; the fact that one may have a license to deal in lobsters and crabs issued by another state does not give him a similar privilege here. So a dealer licensed under the laws of Massachusetts - whether for wholesale or retail trade - must procure the licenses required by s. 53-a if he wishes to engage in the covered activities in this state.

Subsection III deals with the licensing of wholesale activity in the lobster business. This, again, is plain on its face, and may be enforced in its literal terms.

One point you may wish to note is this: it seems plain that the licensed fisherman who, "by virtue of his lobster and crab license" is exempted from procuring a retailer dealer's license, is not by such license exempted from securing a wholesaler's license if he wishes to engage in business at that level.

Very truly yours,

Warren E. Waters
Assistant Attorney General

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